

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
KAY TESTINO)

'For Appellant: Kay Testino,
in pro. per.

For Respondent: James T. Philbin
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 18601.1 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Kay Testino for refund of personal income tax in an amount in excess of \$1.00 for each of the years 1973 through 1978.

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The issue presented by this appeal is whether appellant is entitled to renter's credits for the years in issue.

Appellant has filed six claims for refund for renter's credits for years prior to 1979. During those years, appellant received payments under the Supplemental Security Income and/or State Supplemental Payment programs ("SSI/SSP"). Respondent refused the claims on the basis that, prior to 1979, recipients of such payments did not qualify for the renter's credit. Appellant then filed this appeal.

The Revenue and Taxation Code provides a credit for certain individuals who were California residents on March 1 of the taxable year for which the credit was claimed, and who rented their principal places of residence. (Rev. & Tax., Code, § 17053.5.) Prior to its amendment in 1979, subdivision (c)(2) of section 17053.5 provided that an individual was not entitled to the renter's credit for any period of time during which he "received public assistance grants which took into account housing or shelter needs."

Initially, we note that respondent cites an unpublished opinion of the Court of Appeal in support of its position that SSI/SSP payments constitute public assistance which take into account housing or shelter needs; We cannot consider this decision since unpublished decisions have no precedential value. (People v. Valenzuela, 86 Cal.App.3d 427 [150 Cal.Rptr. 314] (1978); People v. North Beach Bonding Co., 36 Cal.App.3d 663 [111 Cal.Rptr. 757] (1974).) However, for the reasons set forth below, we agree with respondent's determination.

In the Appeal of Gloria J. Oliveria, decided by this board on March 31, 1982, we addressed an issue identical to the one presented here, i.e., whether SSI/SSP payments constitute public assistance grants which take into account housing or shelter needs. The analysis used in that decision is equally applicable here:

SSI is a federal program which provides assistance to the elderly, blind and disabled. (42 U.S.C. §§ 1381, 1381(a).) SSP is a program administered by the federal government whereby the state makes supplemental payments to the same recipients. (Welf. & Inst. Code, §§ 12000, et seq.)

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The SSI/SSP programs take housing needs into account in two ways. First, the maximum payment under each program takes into account **the average** cost of housing. The maximum SSI payment is determined by reference to a base figure which is adjusted to reflect changes **in** the Consumer Price Index. (42 U.S.C. §§ 1382(f), 415(i).) Since the Consumer Price Index is affected by changes in the average cost of housing, the amount of the maximum SSI payment varies in accordance with average housing costs. Similarly, the maximum SSP payment is calculated by adjusting a base figure in accordance with changes in the separate Consumer Price Indices (all items) for Los Angeles's-Long Beach and San Francisco-Oakland. (Welf. & Inst. Code, § 12201.) One of the Consumer Price Indices is the housing index. Thus, the SSP program also considers average housing costs. The second manner in which the SSI/SSP programs consider housing needs is **that** both **programs** reduce an individual's payment **if** that individual receives free housing. (42 U.S.C. § 1382(a)(2)(A); Welf. & Inst. Code, § 12200, subd. (i).) From this, we conclude that a portion of the SSI/SSP payment is intended to provide recipients with funds **to be** used to meet their housing needs.

Accordingly, since the SSI/SSP programs take housing or shelter needs into account, and because appellant received payments under either one or both of these programs during the years in issue, she is not entitled to renter's credits for the appeal years.

For the foregoing reasons, the action of the Franchise **Tax** Board must be sustained.

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$$\underline{Q} \cdot \underline{R} \quad \underline{D} \quad \underline{E} \quad \underline{R}$$

Pursuant to the views expressed in ~~the~~ opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND **DECREED**, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Kay Testino for refund of personal income tax in an amount in excess of \$1.00 **for** each of the years **1973** through 1978, be and the same **is** hereby sustained.

Done at Sacramento, California, this 14th day of October , 1982, by the State Board of Equalization, with Board Members Mr. **Bennett**, Mr. Collis, Mr. **Dronenburg** and Mr. Nevins present.

William M. Bennett, Chairman
Conway H. Collis, Member
Ernest J. Dronenburg, Jr., Member
Richard Nevins - -, Member
_____, Member